

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Assessment and Collection ) MD Docket No. 95-3  
of Regulatory Fees for )  
Fiscal Year 1995 )

To: The Commission

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**COMMENTS OF**  
**MOBILEMEDIA COMMUNICATIONS, INC.**

1. MobileMedia Communications, Inc. ("MobileMedia") herewith submits its comments in response to the above-captioned Notice of Proposed Rule Making ("NPRM") in MD Docket No. 95-3 where the Commission proposes, among other things, to increase the fees charged to Part 22 licensees, including paging service providers, by 500 per cent!!! Under the Commission's proposal, MobileMedia's user fee would increase by approximately \$150,000! As demonstrated below, the Commission's proposed fee increase for paging companies is unlawful, arbitrary and unsupportable.

**BACKGROUND**

2. In its Report and Order in Docket No. 94-19, FCC 94-140, released June 8, 1994, the Commission adopted annual user fees to implement Section 6002(a) of the Omnibus Budget Act of 1993 (hereinafter "Budget Act") and Section 9 of the Communications Act of 1934, as amended.<sup>1</sup>

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<sup>1</sup> See Pub. L. No. 103-66, Title VI, § 6002(a), 107 Stat. 397 (approved August 10, 1993). Section 9 of the Communications Act is modified at 47 U.S.C. § 159.

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3. At paragraph 88 of its Report and Order in response to the comments submitted by the Personal Communications Industry Associates ("PCIA") demonstrating that the term "subscriber" means "customer," the Commission stated that it would define "a subscriber to a mobile service as an individual or entity authorized by a mobile service provider to operate under its blanket license in exchange for monetary consideration." The Commission at Rule Section 1.1154 adopted an annual user fee of \$60 per subscriber for Public Mobile Service licensees, which included paging service providers.

4. Thereafter, in a Public Notice released June 20, 1994 (Mimeo No. 43535), entitled Common Carrier Regulatory Fees, for the purpose of providing information concerning the payment of 1994 regulatory fees, the Commission set forth an annual fee amount of \$0.06 per subscriber for Public Mobile Service licensees (Part 22). The Commission again stated the following at p.5, n.4:

"For the purposes of calculating regulatory fees, we define a subscriber to a mobile service as an individual or entity authorized by the mobile service provider to operate under its blanket license in exchange for monetary consideration."

Thus, the Commission adopted the Budget Act's definition of the term subscriber as a customer.

5. PCIA and the paging carriers did not file for reconsideration of the Commission's annual user fee rules because the new rules were completely consistent with the language of Section 10 of the Budget Act and statutory schedule of Regulatory Fees<sup>2</sup> which

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<sup>2</sup> See Section 9(g) of the Communication Act, 47 U.S.C. § 159(g).

specifies that Public Mobile Service licensees will be charged \$60 per 1,000 subscribers (emphasis added). Thereafter, MobileMedia submitted a timely and proper payment of its 1994 Annual User Fee in the amount of approximately \$26,000.

**THE COMMISSION'S OUTRAGEOUS PROPOSAL  
TO INCREASE PUBLIC MOBILE SERVICE USER FEES**

7. In its NPRM in MD 95-3, the Commission without explanation makes the following conclusory statement at paragraph 44:

"We recognize that the statutory language permitted a licensee to submit a single per subscriber fee for an entity subscribing to its service no matter how many actual units of communication services that subscriber obtained from the licensee. Nevertheless, we believe that a more equitable payment formulation would require each licensee to submit a fee based on the total number of telephone numbers...that it provides to customers so that its fee payment would better reflect the benefit the licensee receives from its use of frequencies of communications...,we propose...that each licensee in the Public Mobile/Cellular Radio Service pay an annual regulatory fee for each mobile unit or cellular unit, including paging units,...of \$.13 per payment unit."

8. As a result of this proposal, the annual fee for paging carriers will increase from \$.06 per customer to \$.13 per unit, an increase for most paging carriers of 500 per cent!!! As shown below, this proposal is clearly ultra vires, arbitrary and unequitable.

## **NEW PER UNIT FEE IS ULTRA VIRES**

9. In its Report and Order, supra, the Commission adopted the Schedule of Fees enacted by the Congress of the United States which clearly and unequivocally states that Public Mobile Service licensees will pay an annual fee amount per 1,000 subscribers. The legislation makes no reference whatsoever to units. The Commission cites no authority under the Budget Act that enables it to either (1) substitute the term "units" for the term "subscribers," or (2) define "subscribers" as "units." Thus, the Commission's proposal is clearly ultra vires.

10. In addition, the Commission's interpretation of subscribers is clearly inconsistent with the plain meaning of the statute. The word subscriber is not defined in the statute and it is clearly different than the other fee words used such as call sign, VHF and UHF TV station, low power TV station, AM and FM station, space station, earth station, earth station antenna circuits, presubscribed access lines and meters. The Commission cannot redefine all the words in the statute to suit itself. When there is no legislative history defining the term and no definition of the term in the statute, the Court has instructed the Commission to look for the plain meaning of the word -- in other words, look it up in the dictionary.<sup>3</sup> Webster's Ninth New Collegiate Dictionary (1983) indicates that subscriber is the noun associated with the verb subscriber which has the following definitions:

1. To sign one's name to a document.
2. To give consent or approval to something in writing.
3. To sign one's name to promise to give something (money).

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<sup>3</sup> The United States Court of Appeals for the District of Columbia Circuit usually refers to Webster's Third New International Dictionary (1961) for guidance.

4. To enter one's name for a publication or service; to receive a periodical or service regularly or order.

As demonstrated above, a paging subscriber is a person or entity who has signed up to receive paging service regularly. Under any of the above definitions, a subscriber is not an inanimate object such as a unit (pager) or telephone number. In other words, the Commission's new interpretation of the word subscriber is not even close.

11. Moreover, the Commission's attempt to define "subscribers" as "units" instead of customers is inconsistent with its previous interpretation in MD Docket No. 94-19, See paras. 3-4, supra. In this regard, the Commission has made no argument to support such a radical change. Thus, its conclusory statements to the contrary, the Commission has no legal basis whatsoever to change the statutory definition of subscribers to units.<sup>4</sup>

#### **NEW \$.13 PER UNIT FEE IS ARBITRARY AND CAPRICIOUS**

12. The Commission provides no rationale at all for increasing the fee from \$60 per 1,000 subscribers to \$.13 per unit. Clearly, an unsupported increase in fees from 300% to 500% is arbitrary and capricious. Since there is no explanation whatsoever indicating the relationship between the 1994 fee of \$.06 per subscriber and 1995 fee of \$.13 per unit, the

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<sup>4</sup> For court decisions overturning the Commission's improper interpretations of the statute and its failure to provide a rationale for changing its interpretation, see *Bell Atlantic Telephone Companies v. FCC*, 75 RR2d 487 (D.C. Cir. 1994), *Southwestern Bell Telephone Company v. FCC*, 75 RR2d 825 (D.C. Cir. 1994), *National Association of Broadcasters v. FCC*, 740 F.2d 1190, 1205 (D.C. Cir. 1984), *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 851 (D.C. Cir. 1970), cert. denied, 403 U.S. 923 (1971). Since the change in definition is neither a fee adjustment in the rate per 1,000 subscribers nor a reclassification of Public Mobile Service providers, the Commission's decision is subject to judicial review.

Commission's guess as to the appropriate fee is unfounded.<sup>5</sup> As with many of the Commission's pronouncements on this matter, "there is no there, there."

### **THE PROPOSED FEES ARE INEQUITABLE**

13. The sole statement that the Commission made in attempting to justify these obscene new fees based on units is contained in one sentence as follows. "Nevertheless, we believe that a more equitable payment formulation would require each license to submit a fee based on the total number of telephone numbers..." (emphasis added). According to the Commission, "that's it, enough said." Well, it does not work that way. First, nowhere does the Commission (or Congress for that matter) provide standards for determining what is equitable. Are equitable fees based on the number of customers, the amount of gross revenues, the amount of net revenues, the average monthly revenue per unit, the amount of profits, the book value of assets, the market value of stock? What is it exactly? Who knows since the Commission offers no explanation. Either the Commission itself does not know or it does not want to reveal it.

14. Maybe, equitable means the comparison of fee burdens among different types of licensees. Maybe big companies should pay more than small ones<sup>6</sup> or ones owned by women and/or minorities should pay less. For example, the Commission proposes to reduce the fees of the top five market VHF Network Television Stations to \$21,450. As everyone knows, these

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<sup>5</sup> We will address the Commission's concern for equitable fees at paras. 13-14 below.

<sup>6</sup> On the other hand, the Commission intends to give a \$640 million tax break to the owners of Viacom, a \$2.3 billion cable television business.

major market TV stations have been granted a license to print money (without having paid for the spectrum) -- one of these stations is more profitable than the entire paging industry!! In other words, the Commission has somehow concluded that it is more equitable to lower the fees of extremely profitable licensees and substantially increase the fees of marginally profitable ones. Another example of the Commission's irrational fee structure for paging licensees is contained within the class of Public Mobile/Cellular Service licensees. Cellular carriers average nearly \$70 per unit per month while paging carriers average about \$10 per unit per month; however, the Commission would impose identical per \$.13 per unit fees on both. Again, the Commission's rationale is so non-sensical that it is difficult to address in a rational manner. Under the Commission's rationale for changing from subscribers to units, it would be able to redefine the entire fee schedule for all services for a more "equitable" result. Congress did not grant the Commission unbridled authority to rewrite the statute.

### **REINVENTION MEANS BIGGER FCC**

15. Now let's get down to the reality of what the Commission is doing here. The Commission has recently created numerous high-salaried, top-heavy management positions and needs to pay for them. These positions do nothing to reduce the Commission's lengthy application processing backlogs, but they do allow the Commission to charge higher fees. In forming the International Bureau, Wireless Telecommunications Bureau, Cable Television Bureau and Office of Competition, the Commission created tens of high-salaried, managerial and professional positions. For example, not only has the Commission added many new Bureau and Division Chief positions, it has also created new positions for Deputy Bureau Chiefs, Associate

Bureau Chiefs, Assistant Bureau Chiefs, Legal Assistants to Bureau Chiefs, Special Assistants to Bureau Chiefs, Deputy Division Chiefs, Legal Assistants to Division Chiefs and Special Advisors to Division Chiefs. Recently, it even announced two new ones -- Assistant to the Common Carrier Bureau Chief for Economics and Special Assistant for External Affairs to the Common Carrier Bureau Chief. In addition, we now have Policy and Enforcement Divisions composed almost entirely of high-salaried professionals.<sup>7</sup>

16. On the other hand, even though the Commission raised its application fees (as opposed to user fees)<sup>8</sup>, it has not added employees to process the huge application backlog of up to eight months for routine, uncontested paging stations! Does this make any sense? Only if the goal of the Commission is to justify higher annual user fees by adding management and non-application processing positions.

17. Whatever happened to Vice President Gore's commitment for Reinvention of the Government -- apparently it means more FCC staff and longer application processing backlogs!! The FCC is now larger than ever before with more employees and expenditures that have increased by more than \$100 million in the last four years -- almost a 100% increase!<sup>9</sup> Who is paying for this -- not the taxpayers. With FCC application fees, FCC annual user fees and FCC forfeitures, the FCC has become a profit center (excluding the billions of dollars paid by PCS narrowband and broadband auction winners). As long as the FCC can unilaterally and

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<sup>7</sup> The FCC has hired an additional 23 economists and now has more PHD economists than any United States college or business graduate school!

<sup>8</sup> The cost for processing applications is paid for with FCC application fees, not user fees, which can only be raised in accordance with inflation rate increases.

<sup>9</sup> The FCC proposes to increase its budget for FY 1996 to \$223.6 million from \$184.8 million in FY 1995 which was \$25 million higher than expenditures for FY 1994.



unjustifiably increase annual fees to cover its featherbedding, Reinvention will mean Really Big Government.

### CONCLUSION

18. In proposing radically higher annual user fees for Public Mobile Service licensees, the Commission cannot change the statutory definition of subscribers from customers to units without having Congress first change the language of the Act. The Commission cannot increase annual user fees up to 500 per cent on Part 22 paging carriers, without justification. The Commission should not use the annual user fee process to create top heavy management, enforcement and policy positions. Instead, the Commission should adjust user fees for Part 22 paging licensees by a small increment, no more than the inflation rate for 1994, based on the number of subscriber customers served by each licensee.

Respectfully submitted,

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